No. 489.
Motion to advance.

SUPREME COURT U. S.
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JAMES H. McKENNEY,
Clerk.

Filed Jan. 9, 1900.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1899.

HARRY PLUMMER, as Executor of the Last Will and Testament of Joseph Plummer, deceased,
Plaintiff in error,

vs.

BIRD S. COLER, Comptroller of the City of New York,
Defendant in error.

No. 489

MOTION TO ADVANCE.

And now come the plaintiff in error and the defendant in error, and jointly move this Honorable Court to advance this cause upon the docket and hear it at as early a day as the convenience of the Court will permit. The reasons for this motion and application are as follows, that is to say:

This cause involves questions of great public importance—immediately important to the United States, to the State of New York, and to the many other States having inheritance tax laws—arising under the execution of the tax and revenue laws of New York. The Surrogate's Court of the County of New York, whose order and decree is now brought up for review, is, together with the defendant in

error, virtually the assessing officer or authority of the State, for the purpose of fixing taxes under its transfer, or inheritance tax law.

The question presented on this writ of error relates to the constitutionality and validity of the inheritance tax sections of the "Tax Law" of the State of New York, in so far as they are applied to the taxation of the so-called transfer, by will or intestate succession, of *bonds of the United States*, it being contended on the part of the plaintiff in error that the tax impairs the borrowing power of the United States, under the Constitution, and is in violation of, and repugnant to, the statute of the United States passed July 14th, 1870, known as the Refunding Act, and in violation, and destructive of the obligation, of the contract contained in said bonds, inasmuch as the statute and contract *exempt* said bonds from taxation "in any form" by any State.

This question has been determined by the courts of the State of New York, and by all other courts which have had the question under consideration, in favor of the validity of the State tax laws, on the ground that the tax is upon the right or privilege to transfer and transmit by testamentary disposition or intestate succession, and not upon the bonds themselves.

One of the chief questions involved, therefore, relates, in a measure, to the nature of the tax itself, as well as to its incidence.

There is now pending in this Court, undetermined (in Nos. 458 and 459, October Term, 1899), the question as to the validity of the inheritance tax features of the War Revenue Act of 1898 (Sections 29 and 30), as applied to United States bonds. It is claimed there, also, that the tax is valid, because placed on the privilege and not on the bonds.

As this whole question as to the scope and nature of this species of tax is thus presented in both classes of cases, it is extremely important that the Court should have both before it at the same time.

There are now outstanding upwards of *one thousand and twenty-six millions* of United States bonds subject to both the Federal and State tax. The combined tax may average at least ten per cent., which would mean a *deduction of over ten million and a quarter of dollars from the value of these bonds—to say nothing of future issues. An attack is thus made upon the entire present and future borrowing power of the United States.*

The question as to the validity in this respect of both the State and the Federal laws, is arising in a great many jurisdictions throughout the country from day to day, and counsel are not aware of any question of greater public importance than that thus presented. As an open question, it is, necessarily, constantly embarrassing the officials having to do with the execution of such tax laws.

Under these circumstances counsel respectfully suggest that it is essential that this unusually important constitutional question should be determined, *in all its aspects*, as speedily as may be, and, above all, that the Court should have before it, when determining the question which arises under the War Revenue Act, the very similar question, so far as the nature, scope and incidence of the tax are concerned, which is presented by this writ of error.

Respectfully submitted,

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~~JABISH HOLMES, Jr.,~~ Horace Russ
Counsel for Defendant in error.